

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 17-5024-PET

Petition of Chelsea Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of the “Chelsea Solar Project,” a 2.0 MW solar electric generation facility on Willow Road in Bennington, Vermont	
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Order entered: 04/12/2018

**ORDER DENYING CHELSEA’S MOTION TO AMEND THE SCHEDULE**

**I. INTRODUCTION**

On April 9, 2018, Chelsea Solar LLC (“Chelsea” or the “Petitioner”) filed a motion to amend the schedule in this proceeding (the “Chelsea Motion”). Also on April 9, 2018, the Town of Bennington (the “Town”) filed comments opposing the Chelsea Motion (the “Town Opposition”). In this Order, I deny the Chelsea Motion.

**II. BACKGROUND**

On March 9, 2018, Chelsea filed a brief in support of its position that it has a vested right to the applicability of the Bennington Town Plan in effect in 2014 (the “Chelsea Brief”).

On April 9, 2018, Chelsea filed the Chelsea Motion, the Town filed the Town Opposition, and Chelsea filed a reply brief in response to the Town Opposition. The Chelsea Motion requests to amend the schedule in this proceeding so that Chelsea can conduct discovery on the Town in response to the Town’s opposition to Chelsea’s claim that it has a vested right to the 2014 Town Plan unaffected by a 2016 amendment to that plan.

No other comments on the Chelsea Motion have been filed.

**III. DISCUSSION AND CONCLUSION**

Chelsea asserts that it needs to amend the schedule to allow for discovery on the Town to support Chelsea’s claim that it has a vested right to the applicability of the 2014 Town Plan unaffected by the 2016 Town Plan amendment. “[B]ecause the Town asserts that the Chelsea project is subject to the 2016 Town Plan amendment, Chelsea is entitled to immediate discovery

on the Town related to the issue of whether any portion of those changes were made to target the Chelsea project.”<sup>1</sup>

The Town argues that “the discovery requested has no bearing on the legal inquiry applicable to determining which version of the Town Plan is at issue.”<sup>2</sup> I agree.

Chelsea relies in its argument for discovery above on the majority rule for the vested rights doctrine.<sup>3</sup> The majority rule states that neither the filing of an application nor the issuance of the permit vest rights in the applicant against future changes in zoning regulations unless there has been a “substantial change of position” or “the amendment was enacted primarily to thwart the applicant’s plans for development.”<sup>4</sup>

Vermont does not follow the majority view for the vested rights doctrine but instead observes the minority rule.<sup>5</sup> The minority rule states that “a permit applicant gains a vested right in the governing regulations in existence when a full and complete permit application is filed.”<sup>6</sup>

The majority rule is not followed in Vermont because it relies upon “a factual determination virtually impossible to arrive at short of litigation, a feature which, in our view, emphasizes the undesirability of the rule generally.”<sup>7</sup> Chelsea’s request for additional discovery seeks further litigation to substantiate its argument under second exception to the majority rule for the vested rights doctrine that has been rejected by the Vermont Supreme Court.

Chelsea’s request to amend the schedule to allow for additional discovery is denied because the Vermont Supreme Court observes the minority rule for the vested rights doctrine.

**SO ORDERED.**

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<sup>1</sup> Chelsea Reply Brief at 5.

<sup>2</sup> Town Opposition at 2.

<sup>3</sup> See *Annot.*, 50 A.L.R.3d 596 (1973).

<sup>4</sup> *Smith v. Winhall Planning Comm’n*, 140 Vt. 178, 181 (1981); see also *In re Times and Seasons, LLC Act 250 Reconsideration*, 190 Vt. 163, 167-168 (2011), and *Application of Green Mountain Power Corporation for a certificate of public good*, CPG NM-1646, order of 3/27/15 at 18-19.

<sup>5</sup> *Smith* at 181.

<sup>6</sup> *In Re Paynter 2-Lot Subdivision*, 187 VTR 637, 639 (2010).

<sup>7</sup> *Smith* at 181.

Dated at Montpelier, Vermont, this 12th day of April, 2018 .



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Michael E. Tousley, Esq.  
Hearing Officer

OFFICE OF THE CLERK

Filed: April 12, 2018

Attest:   
Clerk of the Commission

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: [puc.clerk@vermont.gov](mailto:puc.clerk@vermont.gov))*

PUC Case No. 17-5024-PET - SERVICE LIST

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